PUBLIC PROSECUTOR v. PET

[R.Cr.J. (Adams J.) January 3, 1962]

[Muar — Criminal Revision No. 7 of 1961]

Road Traffic — Driving whilst under the influence of drink — Road Traffic Ordinance, 1958, s.37 — Conviction — Endorsement of driving licence — Adequacy of sentence.

On a conviction under section 37 of the Road Traffic Ordinance, 1958, it is mandatory for the Magistrate to order the particulars of conviction to be endorsed on the driving licence held by the person convicted.

Driving under the influence of drink is a serious offence and the sentence must be commensurate with the seriousness of the offence.

CRIMINAL REVISION.

Inche Hamzah bin Dato Abu Samah (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Cur. Adv. Vult.

Adams J.: This case came to my attention as a result of my perusal of the monthly returns. The defendant, Pet bin Ibrahim, was found guilty by the learned Magistrate, Batu Pahat (Tuan Syed Hussain Jamallulil) for an offence of driving a motor vehicle whilst under the influence of drink to such an extent as to be incapable of having proper control over such vehicle, an offence contrary to section 37 of the Road Traffic Ordinance, 1958. He was found guilty and convicted by the learned Magistrate who fined him $100 or 1 month's imprisonment and disqualified him for a period of 12 months but if the record sent to me is correct failed to make any order as to endorsement of the defendant's driving licence. The learned Magistrate permitted him to pay the fine by instalments.

The evidence was that the defendant was seen driving his motor car at Jalan Minyak Beku, Batu Pahat, in a zig zag manner at 10 minutes past 10 o'clock in the forenoon. The defendant was stopped by Sgt. Johar Singh of the Police and as he appeared to be drunk and smelt strongly of alcohol, he was taken to the Medical Officer, Batu Pahat, who certified him as being clinically drunk and by reason thereof unable to drive a motor car.

I asked the learned Deputy Public Prosecutor if he was aware of this case, and he informed me that although there was a departmental instruction issued to the Police that all cases of this nature were to be referred to him in a proper Investigation Paper, the Officer in Charge of the Police Circle at Batu Pahat had not complied with this instruction, and the case had been dealt with as a simple arrest case. He said that this was highly unsatisfactory and would see to it that it would not happen again. I trust that this will be so, and would merely underline what the learned deputy has said and add that unless and until a great deal more careful attention is given to the investigation and prosecution of traffic offences it is very unlikely that there will be any decrease in the accident rate.

The sentence appeared to me to be manifestly inadequate in view of those facts. I asked the learned Magistrate for his reasons. The learned Magistrate gave two reasons, firstly, that the offence of driving whilst under the influence of drink or drugs is a rare one in the Federation, and secondly, that the defendant had not been previously convicted.

With due respect to the learned Magistrate the fact that this offence is apparently rare does not mitigate its seriousness, in fact it is not so rare as the learned Magistrate thinks. There were in fact three such cases to my knowledge last year. Lord Goddard until lately Lord Chief Justice of England has said that and I quote, "driving under the influence of drink was one of the worst offences which it was possible to commit." He went on to say that a motor-car in the hands of a man under such influence of drink or drugs was a most dangerous instrument and the driver was placing the lives of His Majesty's subjects in peril. He said further that it must never be considered in mitigation that no one was injured. If someone was, the driver could be charged with another offence. In his opinion the offence consisted of doing a dangerous and wicked thing which placed other people in danger, and the question that magistrates should ask themselves in such cases was whether any reason existed why the offender should not be sent to prison. He went on to say that he was convinced that the terrible toll on the roads would go on until magistrates passed really severe sentences for this most grave crime. Drunken drivers, he concluded, were as great a menace as a mad dog and ought to be dealt with by severe sentences.

With those *dicta* of Lord Goddard which he made in the Divisional Court in 1951 I most respectfully agree. To make matters worse in this case the defendant was a relief taxi driver and not only therefore endangered innocent users of the highway but might well have endangered the lives of any passengers that he carried and I do not think that the fact that the accused had not been previously convicted of a similar or any other offence is a mitigating factor in this case.

Finally, the learned Magistrate has failed to observe a mandatory provision and has failed to order the particulars of conviction under section 37 to be endorsed on the driving licence held by the person convicted. It is the bounden duty of a Magistrate to comply with the provisions of the law, and where the law says that the Court shall order the particulars of any conviction under this section to be endorsed on the accused's

driving licence the Magistrate is bound by law to do so and to fail to do so is a presumptuous neglect of his duty imposed upon him by Parliament.

In my view the learned Magistrate has seriously misdirected himself on what he should take into consideration when assessing sentences for offences of this nature. The conviction of the accused is upheld. The sentence of fine, however, is quashed and any payment made in respect thereof must be returned to the accused and in substitution therefor the accused is sentenced to three months' imprisonment, the period of disqualification is increased to two years and the particulars of the conviction must be endorsed on the defendant's driving licence.

Order accordingly.

LIM KONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Adams J.) January 13, 1962]

[J.B. — Criminal Appeal No. 32 of 1961]

Criminal Law and Procedure — Penal Code, s.387 — Extortion — Putting person in fear of injury.

Evidence Ordinance, 1950, ss.8, 54 and 57 — Admissibility — Whether evidence of financial embarrassment is evidence of bad character — Hearsay — Judicial Notice.

Criminal Procedure Code (Cap. 6), s.407 — Confiscation of car — Whether justified.

The appellant was convicted on an amended charge under section 387 of the Penal Code of writing certain letters threatening to kill one Teng Wah Fook unless $14,000 ransom money was paid over by the mother of the said Teng Wah Fook and sentenced to 3 years' imprisonment. The learned President also ordered that the car in which he was arrested to be confiscated. On appeal, it was argued *inter alia*: (i) evidence introduced by the prosecution to show that the accused was in a state of financial embarrassment was purely evidence of bad character and therefore inadmissible under section 54 of the Evidence Ordinance. (ii) the learned President should not have called upon the defence because the evidence negatived the fundamental elements of the charge, namely that the appellant was the person who put the complainant in fear of death or injury, (iii) the learned President failed to direct his mind to whether a certain letter (exhibit P3) was written by the appellant and whether it put the complainant in fear, and (iv) there was no justification for the confiscation of the accused's motor car.

Held: (1) the fact that a person is unable for the moment to satisfy his creditors is not evidence of criminal or grave moral misconduct and as such the evidence was admissible and did not prejudice the fairness of the trial;

(2) from the evidence the learned President's conclusion that the complainant was put in fear was a fair one;

(3) there was ample evidence to show how and why the learned President found that the complainant had been put in fear;

(4) there was no justification for the confiscation of the accused's motor car under the provisions of section 407 of the Criminal Procedure Code as it was not used for the commission of the offence, but merely to collect the ransom money.

Cases referred to:—

(1) *Loke Soo Har* v. *Public Prosecutor* [1954] M.L.J. 149.
(2) *Balasingham* v. *Public Prosecutor* [1959] M.L.J. 193.
(3) *R.* v. *Bartlett* [1959] Cr. L.R. 285.
(4) *Austin's Case* [1958] Cr. Cases and Comment 93.
(5) *Rodley's Case* 9 Cr. App. R. 69.
(6) *Morrissey's Case* 23 Cr. App. R. 189.
(7) *Taylor's Case* 25 Cr. App. R. 46.
(8) *Palmer's Case* 25 Cr. App. R. 97.
(9) *Lee Lip Ngee* v. *Crown Counsel* [1947] M.L.J. 68.

CRIMINAL APPEAL.

David Marshall for the appellant.

Hamzah bin Dato A. Samah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Adams J.: This is an appeal by Lim Kong who was convicted by the learned President of the Sessions Court sitting at Johore Bahru on the 9th August, 1961, on an amended charge in that he between the 11th and 13th February, 1961, at Jemaluang in the Police District of Mersing, in the State of Johore, in order to the committing of extortion put Wong Ah Kam in fear of death of her son, Teng Wah Fook by threatening that he would kill Teng Wah Fook unless the said Wong Ah Kam paid him $14,000 ransom money, and that he thereby committed an offence punishable under section 387 of the Penal Code. The appellant was sentenced to three years' imprisonment, and the car in which he was arrested was ordered to be confiscated.

There were eight grounds of appeal. The first of these, which was subsequently abandoned by Mr. Marshall, was in effect that there was no jurisdiction for the learned President to transfer the case from the Mersing Sessions Court to the Sessions Court sitting at Johore Bahru. In view of the fact that Mr. Marshall abandoned this it is not necessary to say anything more than that the jurisdiction of a Sessions Court is Federation wide [Courts Ordinance, 1948, section 59(2)] and section 104 gives a president or magistrate power to transfer any case or matter to any other Sessions Court in the interests of justice. Although Mr. Marshall underlined the words "interests of justice" and said that the learned President should have exercised his discretion judicially it clearly was in the interests of justice that this case be transferred from Mersing to Johore Bahru for the convenience of the learned President, counsel and the court generally and in order that the trial could continue in a place where the necessary legal authorities were readily available.

The second ground of appeal was the admission of the first two extortion letters P1 and P2 and of the evidence of P.W. 11, Kan Chow, and P.W. 12, Tan Oon Cheng. Evidence concerning Exhibits P1 and P2 had to be given as the documents examiner had examined them and in fact that evidence was favourable to the accused, namely that he did not write the first two extortion letters. The evidence as to what happened on previous ambushes was in the main the result of cross-examination by counsel for the defence and I do not think that that evidence was either inadmissible or prejudicial to the